

PATRICK D. ROBBINS (CABN 152288)
Acting United States Attorney
PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
KELSEY J. HELLAND (CABN 298888)
Assistant United States Attorney
U.S. ATTORNEY'S OFFICE
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

ERIC HAMILTON
Deputy Assistant Attorney General
DIANE KELLEHER
Branch Director
CHRISTOPHER HALL
Assistant Branch Director
JAMES D. TODD, JR.
Senior Trial Counsel
YURI S. FUCHS
GREGORY CONNER
Trial Attorneys
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Counsel for Defendants

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO COMPEL
COMPLIANCE WITH PRELIMINARY
INJUNCTION OR TO HOLD
DEFENDANTS IN CONTEMPT**

Hearing Date: April 9, 2025

Time: 8:00 am

Judge: Hon. William H. Alsup

Place: San Francisco Courthouse
Courtroom 12

1 This Court should deny Plaintiffs' motion to compel compliance with this Court's March
 2 13, 2025, preliminary injunction and decline to hold Defendants in contempt because Defendants
 3 have, at a minimum, substantially complied with the Court's order by taking all reasonable steps
 4 to comply.

5 This Court's March 13, 2025, preliminary injunction required the Departments of
 6 Agriculture, Defense, Energy, the Interior, the Treasury, and Veterans Affairs to:

7 (1) immediately offer reinstatement to any and all probationary employees terminated on
 8 or about February 13th and 14th, 2025.
 9 Tr. of Mar. 13, 2025, Hrg. at 52:7-10, 53:17-25, ECF No. 120;

10 (2) immediately advise all probationary employees terminated on or about February 13
 11 and 14 that the notice and termination have been found to be unlawful by the United
 12 States District Court for the Northern District of California."
Id. at 52:14-21, 53:17-25; and

13 (3) submit a list of all probationary employees terminated on or about February 13th and
 14 14th with an explanation as to each of what has been done to comply with this order.
Id. at 53:13-16.

15 On March 20, 2025, Defendants filed under seal lists of "all probationary employees
 16 terminated" as a result of the OPM guidance this Court has determined was unlawful. *See*
 17 Admin. Mot to File Agency Lists of Employees Under Seal, ECF No. 143. Defendants also
 18 included explanations as to what each agency had done to comply with the Court's order: to
 19 "immediately offer reinstatement" to any and all probationary employees terminated on or about
 20 February 13 or 14, 2025; and to "immediately advise all probationary employees" terminated on
 21 or about February 13 and 14 that the notice and termination have been found to be unlawful by
 22 the United States District Court for the Northern District of California. *See* Not. of Filing Certain
 23 Agency Declarations & Redacted Lists of Agency Emps., ECF No. 144. Those filings
 24 demonstrated the steps that each agency had undertaken to immediately comply with the Court's
 25 orders. These steps typically included notifying each employee of the Court's order and offering
 26 to reinstate each employee. As a general matter, agencies immediately placed employees who
 27 accepted the offer of reinstatement on paid leave and began the process to fully reinstate each
 28 employee, including providing new identification and access badges, equipment, office

1 assignment, and meaningful work assignments. *See, e.g.*, Decl. of Reesha Trznadel ¶¶ 4-9, ECF
2 No. 139-3; Decl. of Mary Rice, ¶¶ 4-9, ECF No. 139-3.¹

3 First, this Court should reject Plaintiffs' contention that Defendants have not complied
4 with this Court's order because each agency had not returned each employee who accepted an
5 offer of reinstatement to full duty status by March 13, 2025. *See* Pls.' Mem. in Supp. of Mot. to
6 Compel at 8-10. This Court did not order each employee to be immediately returned to full duty
7 status by March 13. To the contrary, it ordered each of these six agencies to "immediately offer
8 reinstatement to any and all probationary employees terminated on or about February 13th and
9 14th, 2025." Tr. of March 13, 2025, Hrg. at 52:7-10, 53:17-25. Each Defendant covered by the
10 preliminary injunction has complied with that order.

11 Second, Plaintiffs' complaints about the placement of probationary employees on
12 administrative leave lack merit. As Defendants have previously demonstrated, each agency's
13 placement of employees on administrative leave is merely a first step in the process of returning
14 them to full duty status. *See* Resp. to Ct.'s Third Request for Info., at 1-2, ECF No. 139.
15 Plaintiffs also ignore the realities of the steps that each agency must undertake to return each
16 probationary employee who accepted the agency's offer to return to work and the time that it
17 takes to undertake those steps. *See, e.g.*, Trznadel Decl. ¶¶ 4-9.

18 Finally, this Court should also reject Plaintiffs' contention that Defendants have not
19 complied with the Court's order to immediately provide notice to all "probationary employees
20 terminated" that the Court had found their terminations to be unlawful. *See* Pls.' Mem. in Supp.
21 of Mot. to Compel at 10. Plaintiffs complain that some agencies initially provided notice of the
22 Court's ruling via press release. *See id.* As an initial matter, constructive notice of the Court's
23 order is legally sufficient. *See, e.g., United States v. Signed Pers. Check No. 730 of Yubran S.*
24 *Mesle*, 615 F.3d 1085, 1092 (9th Cir. 2010) (noting that defendant's conduct is measured by

25 ¹ Declarations filed in *Maryland v. U.S. Dep't of Agric.*, No. 1:25-cv-0748 (D. Md.)
26 (*"Maryland v. USDA"*), also demonstrate that the agencies have continued to make progress
27 since their March 17, 2025, filings. *See Maryland v. USDA*, ECF No. 103-1 at 2, ¶¶ 4-7 (USDA
28 declaration attesting to Phases 1-4; by Phase 2, March 31, 2025, approximately 2400 employees
will be returned to duty status); *id.*, ECF No. 103-1, at 11-12 ¶¶ 4-8 (Energy declaration attesting
that approximately 480 employees will be "re onboard[ed]" by March 31, 2025).

1 “actual or constructive notice”); *Cent. States, SE & SW Areas Health & Welfare & Pension*
2 *Funds v. Transcon Lines*, No. 90-cv-1853, 1995 WL 472705, at *8 (N.D. Ill. Aug. 8, 1995)
3 (“[W]e hold that constructive notice, namely, less than actual knowledge but awareness of facts
4 sufficient to cause a reasonable person to inquire further, is adequate notice to a corporate officer
5 of the existence of a court order to satisfy due process.”). In any event, as the filings attached to
6 this response, and to Defendants’ accompanying motion to file under seal indicate, those
7 agencies have continued to work to provide actual notice to each employee in addition to
8 offering reinstatement and working to return employees to duty status. Specifically, with this
9 motion, Defendants submit for the Court:

10 1. U.S. Department of Defense’s declaration, identifying additional steps taken; to
11 subsequently identify probationary employees terminated subsequent to the OPM guidance
12 beyond those employees terminated on February 13, 2025; to offer reinstatement to these
13 employees; and return these employees to duty status.

14 2. U.S. Department of Defense’s list of terminated probationary employees that it
15 subsequently identified were terminated subsequent to the OPM guidance and steps taken as to
16 each employee. An unredacted version of this list is being submitted under seal.

17 3. U.S. Department of Veterans Affairs’ updated list of steps taken to offer reinstatement
18 to terminated probationary employees and return these employees to duty status. An unredacted
19 version of this list is being submitted under seal.

20 4. U.S. Department of the Interior’s updated list of steps taken to offer reinstatement to
21 terminated probationary employees and return these employees to duty status. An unredacted
22 version of this list is being submitted under seal.

23 5. U.S. Department of Treasury’s declaration, identifying additional steps taken to offer
24 probationary employees reinstatement and return these employees to duty status as well as a
25 further explanation of administrative measures need to return employees to duty status.

26 6. U.S. Department of Energy’s declaration, identifying additional steps taken to offer
27 probationary employees reinstatement and return these employees to duty status as well as a
28 further explanation of administrative measures need to return employees to duty status.

1 7. U.S. Department of Agriculture's declaration, identifying additional steps taken to
2 offer probationary employees reinstatement and return these employees to duty status as well as
3 a further explanation of administrative measures need to return employees to duty status.

4 Plaintiffs thus fail to demonstrate that Defendants have not complied with this Court's
5 preliminary injunction and also fail to demonstrate that civil contempt is warranted.

6 **CONCLUSION**

7 This Court should deny Plaintiffs' motion to compel compliance with the Court's March
8 13, 2025, preliminary injunction.

9 Dated: March 31, 2025

Respectfully submitted,

10 PATRICK D. ROBBINS (CABN 152288)
11 Acting United States Attorney
12 PAMELA T. JOHANN (CABN 145558)
13 Chief, Civil Division
14 KELSEY J. HELLAND (CABN 298888)
15 Assistant United States Attorney
16 U.S. ATTORNEY'S OFFICE
17 450 Golden Gate Avenue, Box 36055
18 San Francisco, California 94102-3495

ERIC HAMILTON
Deputy Assistant Attorney General

DIANE KELLEHER
Branch Director

CHRISTOPHER HALL
Assistant Branch Director

JAMES D. TODD, JR.
Senior Trial Counsel

21 s/ Yuri S. Fuchs
22 YURI S. FUCHS
23 GREGORY CONNER
24 Trial Attorneys
25 U.S. DEPARTMENT OF JUSTICE
26 Civil Division, Federal Programs Branch
27 P.O. Box 883
28 Washington, DC 20044

Counsel for Defendants